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EXAMINER
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SUBRAMANIAN, NARAYANSWAMY

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BRIAN S. BRITTINGHAM and THOMAS JESSOP

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Appeal 2015-001605  
Application 12/861,658  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, NINA L. MEDLOCK, and  
AMEE A. SHAH, *Administrative Patent Judges*.

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

The Appellants<sup>2</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 37–56. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Throughout this opinion, we refer to the Appellants' Appeal Brief ("Appeal Br.," filed July 9, 2014), Reply Brief ("Reply Br.," filed Nov. 24, 2014), and Specification ("Spec.," filed Aug. 23, 2010), and to the Examiner's Answer ("Ans.," mailed Sept. 29, 2014) and Non-Final Action ("Non-Final Act.," mailed Jan. 10, 2014).

<sup>2</sup> According to the Appellants, the real party in interest is "Goldman, Sachs & Co. of New York, NY." Appeal Br. 2.

## STATEMENT OF THE CASE

The Appellants' invention relates generally to "monitoring financial information and executing financial transactions," and more specifically to "improvements in interface apparatus, methods, and articles of manufacture, for monitoring financial information and executing financial transactions within a networked environment." Spec. 1.

Claims 37, 49, and 53 are the independent claims on appeal. Claim 37 (Appeal Br. 18 (Claims App.)) is illustrative of the subject matter on appeal, and is reproduced below (with bracketing added for reference):

37. A processor-implemented method for providing a customized interface, comprising:

[(a)] receiving via a processor content data from a plurality of financial information content sources;

[(b)] receiving via the processor at least one interface customization parameter;

[(c)] receiving via the processor at least one user-selected interface panel from a plurality of non-customized interface panels;

[(d)] pre-selecting, in accordance with the received customization parameter, at least one interface panel from the plurality of non-customized interface panels;

[(e)] constructing via the processor customized interface panels by providing each of the received and pre-selected interface panels with financial information content data received from at least one financial information content source selected from the plurality of financial information content sources in accordance with the received customization parameter;

[(f)] monitoring how long the financial information content data has been provided to the received and pre-selected interface panels; and

[(g)] generating via the processor a customized graphical user interface from the constructed customized interface panels in accordance with the received customization parameter.

### REJECTIONS<sup>3</sup>

I. Claims 37–56 stand rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. Non-Final Act. 7.

II. Claims 37–56 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. *Id.* at 10.

III. Claims 37–56 stand rejected under 35 U.S.C. § 101 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–20 of US 7,904,358 B2. *Id.* at 12.

IV. Claims 37–56 stand rejected under U.S.C. § 103(a) as being unpatentable over Risberg (US 5,339,392, iss. Aug. 16, 1994) in view of Official Notice, as evidenced by May (US 6,996,540 B1, iss. Feb. 7, 2006). *Id.* at 17.

V. Claims 37–56 stand rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Ans. 21.

### ANALYSIS

#### *Rejection I — Written Description - § 112*

The Examiner rejects independent claims 37, 49, and 53 (and their dependents) because the Specification does not provide a written description disclosure to support the claimed limitation of a processor to issue

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<sup>3</sup> The objection to the Specification (Non-Final Act. 3) is not addressed because it may be reviewed only by way of petition to the Director. *See* 37 C.F.R. § 1.181; MPEP § 2163.06(II).

instructions to perform the steps of claim 37 (and similarly recited in claims 49 and 53). Non-Final Act. 7–9. Specifically, the Examiner finds that the Specification “does not describe in detail the apparatus components or the system components that perform the functions of receiving, preselecting, constructing and generating that are recited in the claimed invention.” Ans. 25. The Examiner also finds that although the Specification “mentions platforms on which the embodiments of the invention can be implemented,” the Specification does not describe the structure that performs the functions of the claims, and “[t]he broad description about the platforms on which the embodiments of the invention can be implemented fails to satisfy the written description requirement.” Non-Final Act. 8–9. The Examiner further finds that the Specification does not provide adequate support for the monitoring step (f). *Id.*

We agree with the Appellants that the Specification provides adequate support for the claims. *See* Appeal Br. 7–10.

To satisfy the written description requirement, the specification must describe the invention in sufficient detail so “that one skilled in the art can clearly conclude that the inventor invented the claimed invention as of the filing date sought,” (*In re Alonso*, 545 F.3d 1015, 1019 (Fed. Cir. 2008) (quoting *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)), i.e., “whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date” (*Ariad*

*Pharms. Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed.Cir.1991))).

Based on our review of the Specification, we find that the Specification discusses the servers, applications, and interface such as to reasonably convey to one of skill in the art that the Appellants had possession of the claimed invention to satisfy the written description requirement.

The Specification, including the originally filed claims, does not discuss or mention the terms “processor” or “medium,” but does provide for servers and applications to perform the functions of the claim. The Specification provides that: (1) “[a] graphic user interface provides an interface to a local or networked environment [and] permits a user to graphically review data, select depicted objects and manipulate applications corresponding to those objects” (Spec. 2); (2) “applications . . . are executed on the server or client side” (*id.* at 5); (3) web page panels comprise “a Website, which is constructed, via a Web server, from an application server” (*id.*); (4) panels are constructed in an email interface, “via an email server, from an application server” (*id.* at 6); (5) an Alert server provides alerts (*id.* at 7); and (6) embodiments of the invention can be implemented in an operating system platform such as Microsoft Windows® (*id.*).

The Specification further provides that data sources that “may be deconstructed or mixed into various feeds” at the application server feed data for the panels. *Id.* at 8. The mixing into various feeds is accomplished by tools, i.e., applications, customized to a particular user. *Id.* Figure 2 shows an interface wherein customizing selections can be made (*see also id.* at 8–9), and Figure 5 shows an interface to an editor to select layout and

content (*see also id.* at 10). An editor can choose an appropriate panel to display, and the interface “keeps track of [the] time the articles have been published,” i.e., monitors. *Id.* The customization parameters can take effect when a client accesses the web page. *Id.* at 12.

Thus, we are persuaded of error in the Examiner’s rejection, and we do not sustain the Examiner’s rejection of claims 37–56 under 35 U.S.C. § 112, first paragraph.

*Rejection II — Indefiniteness - § 112*

Claims 37–56

The Examiner rejects independent claims 37, 49, and 53 (and their dependents) as “being indefinite for failing to particularly point out and distinctly claim the subject matter which the . . . applicant regards as the invention” because “[i]t is not clear as to what is the relationship between this limitation [i.e., ‘monitoring how long the financial information content data has been provided to the received and pre-selected interface panels’] and the limitation of ‘generating via the processor a customized graphical user interface from the constructed customized interface panels in accordance with the received customization parameter’.” Non-Final Act. 10. Specifically, the Examiner finds that it is not clear whether the generating step (g) depends on the monitoring step (f). *Id.*; *see also* Ans. 28.

The Appellants contend that the rejection is in error because the relationship is clear from the claim and refers to Specification, at page 10. Appeal Br. 10–11. The Appellants point out that a specific order to the steps of the method should not be read into the claims. *Id.* at 11.

The Specification, at page 10, provides that an editor can choose an appropriate panel to be displayed, and the interface “keeps track of [the] time the articles have been published.” The Specification does not describe that the keeping track of time, i.e., monitoring, relates to or affects the generating of the interface in accordance with the customization parameter, as recited in limitation (g), or that the customization parameter is affected by the monitoring.

We find that the claims are not indefinite because one of ordinary skill in the art would clearly understand that the claims recite two separate monitoring and generating steps (f) and (g) that are not dependent on each other.

Thus, we are persuaded of error in the Examiner’s rejection, and we do not sustain the Examiner’s rejection of claims 37–56 under 35 U.S.C. § 112, second paragraph.

#### Claim 42

The Examiner further finds claim 42 indefinite because “[i]t is not clear if the [aggregated] content data in [claim 42] is the same as the ‘financial information content data’ recited in claim 37.” Non-Final Act. 10. The Examiner finds “[i]n view of this ambiguity, the scope of the claim is unclear.” Ans. 28.

Claim 42 recites configuring an interactive alert interface with multiple tabbed interfaces, at least one of which “displays content data aggregated from other of the tabbed interfaces.” Appeal Br. 19. We find that the claim is not indefinite because one of ordinary skill in the art would understand from a reading of the claim that the term “content data” refers to

the financial information content data of claim 37, the only content data recited.

Thus, we are persuaded of error in the Examiner's rejection, and we do not sustain the Examiner's rejection of claim 42 under 35 U.S.C. § 112, second paragraph.

*Rejection III — Double Patenting - § 101*

The Appellants provide no arguments against the Examiner's rejection of claims 37–56 under 35 U.S.C. § 101 on the basis of non-statutory obvious type double patenting. *See* Appeal Br. 12.

Thus, we summarily sustain this rejection of claims 37–56 under 35 U.S.C. § 101.

*Rejection IV — Obviousness - § 103*

Claim 37 recites, in relevant part, “pre-selecting, in accordance with the received customized parameter, at least one interface panel from the plurality of non-customized interface panels,” i.e., limitation (d).

The Examiner relies particularly on Risberg's Abstract, column 5, lines 19–37, and column 7, line 35 through column 10, line 28 for disclosing this limitation. Ans. 29; Non-Final Act. 17. Specifically, the Examiner finds that Risberg's sheets correspond to the claimed panels and that Risberg's menu that allows the user to select a sheet to view from an index of sheets “implies pre-selecting, in accordance with the received customization parameter, at least one interface panel from the plurality of non-customized interface panels.” Ans. 29–30.

We are persuaded by the Appellants' arguments that the Examiner's findings regarding this limitation are inadequately supported. *See* Appeal Br. 13–14. Risberg discloses a program with tools with which a user creates a customized document that comprises “one or more sheets each of which is composed in a custom manner by the user.” Risberg, Abstract. The user can select the data to be displayed, the format and style for displaying the data, the look of the documents with fonts and colors, and alarm limits. *Id.* A menu allows the user to display an index of sheets within the document, to select the sheet to view, and “to control the appearance of the display and the display objects associated with the Active Objects programmed by the user into a sheet.” *Id.* at col. 7, ll. 48–54.

The Examiner does not adequately explain how, in Risberg, the user's selection of a sheet from an index of a plurality of user-customized sheets discloses pre-selecting a sheet from a plurality of non-customized sheets. Rather, the cited portions of Risberg disclose a selection from customized sheets. The Examiner's finding that it is “implied” that one of the sheets is non-customized (*see* Ans. 30) is not supported. Thus, we agree with the Appellants that the Examiner's finding that Risberg discloses limitation (d) of pre-selecting a panel from a plurality of non-customized panel is not adequately supported.

Based on the foregoing, we are persuaded of error on the part of the Examiner, and we do not sustain the Examiner's rejection of independent claim 37 and dependent claims 38–48 under § 103.

The Appellants provide no arguments for independent claims 49 and 53, but appear to group the independent claims together. *See* Appeal Br. 13. Each of independent claims 49 and 53 recites the pre-selecting limitation (d)

of claim 37 (*see id.* 20, 21 (Claims App.)), and the Examiner relies on the same findings for all three independent claims (*see* Non-Final Act. 17). Thus, for the same reason we do not sustain the rejection of independent claim 37, we also do not sustain the rejection of independent claims 49 and 53 and dependent claims 50–52 and 54–56.

*Rejection V—Patent-Ineligible Subject Matter - § 101*

The Appellants argue the claims as a group. *See* Reply Br. 1–3. We select claim 37 as representative. Claims 38–56 stand or fall with claim 37. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* (citing *Mayo*, 132 S. Ct. at 1296-97). If so, the second step is to consider the elements of the

claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1297–98). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294). The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea, and merely invoke generic processes and machinery.

Here, the Examiner rejects claims 37–56 as being directed to an abstract idea, non-statutory subject matter under § 101. Ans. 21–22. The Examiner takes claim 37 as representative (*id.* at 22) and finds that the claim is directed to “to monitoring financial information and executing financial transactions which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity by providing a customized interface.” *Id.* The Examiner further finds that the additional elements of the claim of receiving content data, receiving a parameter, receiving a panel, pre-selecting a panel, constructing a panel, monitoring, and generating a customized interface, “when taken alone, each execute in a manner routinely and conventionally expected of these elements.” *Id.* at 23. The Examiner further finds that the

elements of the claim, “when taken in combination, together do not offer substantially more than the sum of the functions of the elements when each is taken alone,” because they “execute in routinely and conventionally accepted coordinated manners and interact with their partner elements to achieve an overall outcome which, similarly, is merely the combined and coordinated execution of generic computer functionalities which are well-understood, routine and conventional activities previously known to the industry.” *Id.* at 23–24. The Examiner applies “[s]imilar reasoning and logic” to independent medium claim 49 and system claim 53 as for claim 37. *Id.* at 24.

The Appellants first contend the rejection is in error because “[t]he rejection asserts without explanation that claim 37 ‘is considered both a fundamental economic practice and a method of organizing human activity’ (Ex. Ans., pg. 22) as a basis for considering the claim abstract.” Reply Br. 2. However, there is no such requirement. Instead, the law is well-established that the USPTO carries its procedural burden when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Here, the Examiner notifies the Appellants that the claims are directed to a patent-ineligible abstract idea, i.e., the fundamental economic practice of “monitoring financial information and executing financial transactions,” and method of organizing human activity of “providing a customized interface.” Ans. 22. The Examiner, thus, has notified the Appellants of the reason for considering the claims directed to an abstract idea with such information “as

may be useful in judging the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132.

The Appellants do not disagree that the claims are directed to providing a customized interface and monitoring and executing financial transactions, i.e., the first step of the *Alice* analysis. Moreover, we note, for emphasis, that this abstract idea is similar to the abstract ideas deemed ineligible by our reviewing court of customizing web page content (*Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015)), delivering user-selected media content (*Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016)), and generating menus with certain features (*Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016)). The Appellants’ argument that the claims are not abstract because they “include multiple steps which involve concrete and specific people, objects, and actions” (Reply Br. 2) is unpersuasive because the steps, even if “concrete,” are all directed to and further elaborate the abstract idea of providing a customized interface and monitoring and executing financial transactions.

We further find unpersuasive the Appellants’ arguments that the claims add limitations that are significantly more than the abstract idea, i.e., the second part of the analysis. *See* Reply Br. 2–3. The Appellants’ argument that the claims do not lack an “inventive concept” because the claims are “novel and non-obvious” (*id.* at 2) is not persuasive — a novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304. The Appellants’ argument that the “meaningful limitations” of the claim “are not merely instructions to implement performing an abstract idea on a computer system” (Reply Br. 3)

is unpersuasive at least because the steps of receiving content data, a parameter, and a user selection, pre-selecting a panel, constructing a panel, monitoring information, and generating a user interface are all computer functions of a general processor. The Specification supports this view in discussing generic data tools, applications, and servers for performing the claimed embodiments. *See, e.g.*, Spec. 4–5. The Appellants’ argument that the claims “constitute an improvement to the computer sciences” in improving the “technical field of integrated data visualization” (Reply Br. 3) is unpersuasive at least because “integrated data visualization” is not a technical field, but can be accomplished without technology. Furthermore, the Appellants do not adequately show how the claimed steps of receiving data, selecting and constructing panels, monitoring, and generating the interface are technically done such that they are not routine, conventional functions of a generic computer, nor do the Appellants provide evidence why the steps are not routine and conventional functions of a generic computer. *See Intellectual Ventures*, 792 F.3d at 1370 (“Rather, the ‘interactive interface’ simply describes a generic web server with attendant software, tasked with providing web pages to and communicating with the user’s computer.”).

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 37 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of claim 37, and also of claims 38–56 which fall with claim 37.

DECISION

The Examiner's rejections of claims 37–56 under 35 U.S.C. § 112 are REVERSED.

The Examiner's rejection of claims 37–56 under U.S.C. § 103(a) is REVERSED.

The Examiner's rejections of claims 37–56 under 35 U.S.C. § 101 are AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED